No. 391.
Motion to advance.
Filed Nov. 19, 1900.

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JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 391.

JOHN T. PIRIE, ROBERT SCOTT, GEORGE SCOTT, ANDREW McLEISCH, SAMUEL C. PIRIE, JOHN E. SCOTT AND JAMES GRASSIE, TRADING AS CARSON, PIRIE, SCOTT & CO., *Appellants*,

vs.

THE CHICAGO TITLE AND TRUST COMPANY, TRUSTEE, *Appellee.*

MOTION TO ADVANCE.

MR. A. J. PFLAUM,
MR. HENRY ACH,
MR. S. O. LEVINSON,
MR. GEORGE PACKARD,
MR. J. M. ROTHSCHILD,
COUNSEL FOR APPELLANTS.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 391.

JOHN T. PIRIE, ROBERT SCOTT, GEORGE SCOTT, ANDREW McLEISCH, SAMUEL C. PIRIE, JOHN E. SCOTT AND JAMES GRASSIE, TRADING AS CARSON, PIRIE, SCOTT & CO., *Appellants,*

vs.

THE CHICAGO TITLE AND TRUST COMPANY, TRUSTEE, *Appellee.*

MOTION TO ADVANCE.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

Now come John T. Pirie, Robert Scott, George Scott, Andrew McLeisch, Samuel C. Pirie, John E. Scott, and James Grassie, copartners, trading as Carson, Pirie, Scott & Co., appellants herein, and move the court to advance the said case upon the call and set the same down at an early day for hearing and for cause of said motion show to the court that:

This is an appeal from an order and judgment of the Circiut Court of Appeals for the Seventh Circuit, affirming the judgment of the District Court of the United

States in and for the Northern District of Illinois, holding that the claim of Carson, Pirie, Scott & Co., creditors of Frank Bros., bankrupts, be disallowed on the ground that moneys paid by an insolvent to a creditor in the usual and ordinary course of business within four months preceeding the date of the filing of a petition in bankruptcy by said insolvent, constitutes a preference under Sections 57G and 60A and 60B of the Bankruptcy Act, irrespective of the fact that the creditor so receiving such payments is not aware of the fact that his debtor is insolvent, or that a preference is thereby intended.

Section 57G of the Bankruptcy Act is as follows:

> Section 57G.—The claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences.

Sections 60A and 60B are as follows:

> Section 60A — Preferred Creditors.— A person shall be deemed to have given a preference if, being insolvent, he has procured or suffered a judgment to be entered against himself in favor of any person or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class.
>
> 60B.—If a bankrupt shall have given a preference within four months before the filing of a petition or after the filing of the petition and before the adjudication and the person receiving it or to be benefited thereby or his agent acting therein shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee and he may recover the property or its value from such person.

The undisputed facts in this case, disclosed by the record, are that for a long time prior to the filing of the peti-

tion against the bankrupts herein, appellants had various dealings with said bankrupt firm, said dealings consisting of the sale by appellants to the bankrupts of goods, wares and merchandise; that said appellants had sold to the bankrupts merchandise of the value of $4,403.77, and that within four months prior to the adjudication in bankruptcy said bankrupts had paid to said appellants, in the ordinary and regular course of business, as partial payment of said account so sold and delivered to said bankrupts, the sum of $1,336.79, leaving a balance due, owing and unpaid, amounting to $3,093.98; that during the said four months preceding the date of adjudication of bankruptcy herein said Frank Bros., bankrupts, were wholly and hopelessly insolvent, and that at the time of the adjudication of bankruptcy their assets did not exceed the sum of $125,000, while their liabilities exceeded the sum of $500,000.

Said record will further show that at the time of the payment above set forth, neither said appellants nor any of their agents, had knowledge of the insolvency of said Frank Bros., bankrupts, or had reasonable cause to believe that said Frank Bros. were insolvent, and that when said payments were made, said Carson, Pirie, Scott & Co. did not have reasonable cause to believe that said bankrupts by said payments intended thereby to give a preference.

There is grave doubt in the minds of the several judges of our United States Courts, and of Referees in Bankruptcy, as to whether or not moneys so paid in the usual, regular and ordinary course of business and innocently received by the creditor, constitutes a preference under the foregoing sections of the act, to the extent of precluding the creditor from proving his claim, unless he

first surrender the moneys so innocently collected within said four months.

There are contrary decisions on this question by the Court of Appeals and several of the District Courts, and in order to have a uniform construction of the Bankruptcy Act, an early decision by this Honorable Court upon this question is essential.

For the purpose of settling the commercial relations between debtor and creditor, and for the purpose of enabling the creditor class of our community to do a credit business with any degree of safety, an early decision by this court of this much mooted question is imperative.

Owing to the conflict of decisions on this question creditors in certain districts are precluded from proving their claims and participating in dividends because they have received partial payments on account within four months of bankruptcy (unless they surrender moneys so received) while under the same state of facts in other Districts they are permitted to prove their claims and collect their dividends.

Every banker and merchant, in fact, the entire commercial community in this country, is interested in and anxiously awaits a speedy decision of this question.

The question of law herein involved presents itself in the administration of every bankrupt estate, in which assets have come into the trustee's hands, and on account of the conflict of decisions construing the foregoing sections of the Bankrupt Act, great confusion has arisen, and is likely to arise in the administration of bankrupts' estates. The pendency of this appeal has become generally known throughout the United States, and by reason thereof, and the unsettled condition of the law re-

garding the proper construction of said sections of the act, the declaration of dividends and the final settlement of bankrupt estates have been postponed and are held in abeyance awaiting the determination of this appeal.

We append to this motion to advance copies of petitions signed by the leading banks and commercial houses of San Francisco and Chicago, respectfully urging this Honorable Court to grant an early hearing of this cause, the original petitions having been filed with the clerk of this court.

Respectfully submitted.

A. J. PFLAUM,
HENRY ACH,
S. O. LEVINSON,
GEORGE PACKARD,
J. M. ROTHSCHILD,
Counsel for Appellants.

Owing to the great importance of the questions involved and the expense incident to the contraction of the decision we respectfully join in the motion as presented and urge this Honorable Court to advance this cause

Eli B. Felsenthal
Counsel for Chicago Title & Trust Co
Appellee

30355

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 391.

JOHN T. PIRIE ET AL., *Appellants,*

vs.

CHICAGO TITLE AND TRUST COMPANY, *Appellee.*

To the Honorable Chief Justice and Associate Justices of the Supreme Court:

MAY IT PLEASE THE COURT:

I take the liberty and this means of calling the court's attention to a decision just published, bearing on the question in this case.

In re Hall, Vol. 2, No. 24, National Bankruptcy News & Reports, p. 1126, *published November 15, 1900.*

The referee's decision in this case shows the public importance of the question involved.

Respectfully submitted.

A. J. PFLAUM,
Counsel for Appellants.

DECISIONS BEARING ON THE QUESTION INVOLVED IN THIS APPEAL.

In re Smoke:

Volume 4, American Bankruptcy Reports, page 434.
Decision by Referee Wise affirmed by Judge Brown.
U. S. district court.

In re Piper:

Second National Bankrupt News, page 7.
Decision by Referee Crow affirmed by Judge Wellborn.
U. S. district court.

Blakeley *vs.* Bank:

95 Federal, page 267.

In re Alexander:

4th American Bankruptcy Reports, page 376.
Contra: Columbus.

Electric Co. *vs.* Worden:

99 Federal, page 400.
Decision by circuit court of appeals, 7th circuit.

Forgy *vs.* Marshall Field & Co.:

Decision by circuit court of appeals, 9th circuit, not reported.

APPENDIX.

IN THE SUPREME COURT OF THE UNITED STATES.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The undersigned bankers of Chicago do hereby petition this august and honorable court to grant the motion, advancing the cause of John T. Pirie, Robert Scott *et al.*, trading as Carson, Pirie, Scott & Company *vs.* Chicago Title and Trust Company, Trustee, in the matter of August Frank, Joseph Frank and Louis Frank, trading as Frank Brothers, in Bankruptcy.

The question involved is the construction of the Bankruptcy Law, and it is of the utmost immediate importance to the entire commercial community of the United States.

THE MERCHANTS NATIONAL BANK OF CHICAGO, ILL.,
By F. W. CROSBY, V. P.

PRODUCE EXCHANGE BANK,
W. O. COOK, Cashier.

UNION TRUST CO.,
F. L. WILK, V. P.

THE BANKERS NATIONAL BANK, CHICAGO, ILLS.,
By EDWARD S. LACEY, Prest.

THE MERCHANTS LOAN & TRUST COMPANY,
ORSON SMITH, Prest.

THE NATIONAL BANK OF THE REPUBLIC, OF CHICAGO.
W. T. FENTON, Vice Pt.

HIBERNIAN BANKING ASSOCIATION, CHICAGO,
By HAMILTON B. DOX, Cashier.

THE WESTERN STATE BANK,
GEO. P. BAY, Pres.

THE FIRST NATIONAL BANK OF CHICAGO,
JAS. B. FORGAN, Pres.

THE COMMERCIAL NATIONAL BANK OF CHICAGO,
JAMES H. ECKELS, Pt.

THE CHICAGO NATIONAL BANK,
F. W. BLOUNT, Cashier.

THE CONTINENTAL NATIONAL BANK OF CHICAGO,
By JOHN C. BLACK, President.

CORN EXCHANGE NATIONAL BANK,
By C. L. HUTCHINSON, *V. P.*

THE NORTHERN TRUST COMPANY,
By BYRON L. SMITH, Prest.

THE METROPOLITAN NAT. BANK OF CHICAGO,
By E. G. KEITH, Prest.

THE AMERICAN TRUST AND SAVINGS BANK, CHICAGO.
E. A. POTTER, Prest.

GARDEN CITY BANKING & TRUST CO.,
JAMES H. GILBERT, Prest.

STATE BANK OF CHICAGO,
By H. A. HAUGAN, Pt.

FORT DEARBORN NAT'L BANK,
By JOHN A. KING, Pt.

THE IMPORTERS AND TRADERS NATIONAL BANK OF NEW YORK.

By PECKHAM, BROWN & PACKARD,
Its agents and attorneys.

IN THE SUPREME COURT OF THE UNITED STATES.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The undersigned, Merchants and Bankers, of San Francisco, do hereby petition this august and honorable court to grant the motion to advance the cause of John T. Pirie, Robert Scott *et al.*, trading as Carson, Pirie, Scott & Co. *versus* Chicago Title and Trust Company, Trustee, in the matter of August Frank, Joseph Frank and Louis Frank, trading as Frank Bros., in bankruptcy.

The question involved is the construction of the Bankruptcy Law, and it is of the utmost immediate importance to the entire commercial community of the United States.

Respectfully yours,

LONDON, PARIS & AMERICAN BANK, LIMITED.
THE DONOHOE, KELLY BANKING CO.
THE CROCKER WOOLWORTH NATIONAL BANK.
MERCANTILE TRUST COMPANY.
LONDON & SAN FRANCISCO BANK, L'D.
THE NEVADA NATIONAL BANK OF SAN FRANCISCO.
AMERICAN BANK AND TRUST CO.' OF SAN FRANCISCO.
W. W. MONTAGUE & CO.
THE BANK OF CALIFORNIA.
THE ANGLO CALIFORNIAN BANK, LT'D.
THE SAN FRANCISCO NATIONAL BANK.
BANK OF BRITISH NORTH AMERICA.
THE FIRST NATIONAL BANK OF SAN FRANCISCO.
BANK OF BRITISH COLUMBIA.
WELLS, FARGO & CO., BANK, SAN FRANCISCO, CAL.
MACK & CO.
JONES-PADDOCK.
SCHLOSS CROCKERY CO.
A. L. BRYAN SHOE CO.
DANIEL MCLEOD & CO.
MEYERSTEIN COMPANY.
LEVI STRAUSS & CO.

HELBING & WEDELEY.
PAYOT, UPHAM & CO.
L. DINKELSPIEL AND SONS
HEYNEMAN & CO.
THE L. ELKUS CO.
B. BLUMENTHAL & CO.
LOUIS KLINE & CO.
HOFFMAN, ROTHCHILD & CO.
CARTER & KELLY.
J. W. COLLINS.
LEOPOLD HIRSCH, MICHALITSCHKE BROS. & CO.
THE GUTTA PERCHA & RUBBER MFG. CO.
BOSTON WOVEN HOSE AND RUBBER CO.
LEEGE & HASKINS.
THE CALIFORNIA POWDER WORKS.
GOLDSTONE BROS.
WOLF BROS.
M. SCHEYER & BROS.
LOWENBERG & CO.
C. H. MEYER & BRO.
MURPHY, GRANT & CO.
HELLER, BACHMAN & CO.
THE FRIEDLANDER HAT CO.
CAHN, NICKELSBERG & CO.
BROWN BROS. & CO.
H. M. HEINEMAN.
C. A. MALM & CO.
H. & L. BLOCK.
BUCKINGHAM & HECHT.
H. S. CROCKER COMPANY.
SACHS BROS. & CO.
GREENEBAUM, WEIL & MICHELS.
SON BROTHERS & CO.
B. HART & BRO.
JULES LEVY & BROS.
G. C. HALL & SON.
REISS BROS. & CO.
CALIFORNIA NOTION & TOY CO.
S. STERNHEIM & SON.
GEO. P. IDE & CO.
KAHN BROS., KLINE & CO.
SELLER BROS. & CO.

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Crane Co.
George H. Tay Company.
Blake, Moffit & Towne.
Langley & Michaels Co.
Mission Soap & Candle Works.
Standard Oil Co.
Siebe Shoe Company.
Kast-Glanville Shoe Co.
San Jose W. M. Co.
D. N. & E. Walter Co.
C. P. Heininger & Co.
Nonotuck Silk Co.
Williams-Marvin Co.
Redington & Co.
C. R. Winslow & Co.
Sanborn, Vail & Co.
Hawley Bros. Hardware Co.
Dunham, Carrigan & Hayden.
Deere Implement Co.
Wellman, Peck & Co.
Abramson-Heunisch Co.
D. M. Osborne Co.
Sussman, Wormset & Co.
Pannell-Suydam Co.
H. Levi & Co.
A. Schilling & Co.
Dodge, Sweeney & Co.
Hass Bros.
Le Count Bros. & Co.
Gobel & Banner.
Hooker & Co.
Mau, Sadler & Co.
J. A. Folger & Co.
Baker & Hamilton.
American Steel & Wire Company.
Miller, Sloss & Scott.
Western Sugar Refining Co.
M. Ehrman & Co.
Sperry Flour Company.
W. Buller & Co.